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IN THE

# Supreme Court of the United States

October Term, 1957
No. 800

In the Matter
of the
Petition of SKIBS A/S JOLUND, in a cause of exoneration from or limitation of liability for damages arising out of a fire on board the BLACK GULL on July 18, 1952.

BLACK DIAMOND STEAMSHIP CORP.,
*Petitioner,*

*vs.*

AMERICAN SMELTING & REFINING COMPANY, ET AL.,
*Respondents.*

BLACK DIAMOND STEAMSHIP CORP.,
*Petitioner,*

*vs.*

MARIA ANGELINA VERBEECK, ET AL.,
*Respondents.*

## REPLY OF PETITIONER, BLACK DIAMOND STEAMSHIP CORP., TO BRIEF IN OPPOSITION TO THE PETITIONS FOR A WRIT OF CERTIORARI

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## REPLY OF PETITIONER, BLACK DIAMOND STEAMSHIP CORP., TO BRIEF IN OPPOSITION TO THE PETITIONS FOR A WRIT OF CERTIORARI

### I

The opposition brief states that the petitions for certiorari appear premature and really constitute a request for a review of questions of fact which interest only parties to this litigation.

As is set forth in the petitions for certiorari, this litigation involves the scope of the authority of a Court of Appeals and the application of that authority to the cases in suit as well as the interpretation of portions of statutes of the United States not previously passed upon by this Court and inconsistently applied by the subject Court of Appeals in this and earlier decisions.

With respect the timeliness of these writs, it is basic that the District Court is bound by the mandate of the Court of Appeals and cannot deviate from the course of action directed by the higher court. The lower court, in these cases, must answer the questions posed by the Court of Appeals and, even though not bound by the dicta of the higher court, may well be greatly influenced by the erroneous evaluation and interpretation of the testimony and the burden of proof.

As was said by the Court of Appeals for the Eighth Circuit, in *Thornton* v. *Carter*, 109 F (2d) 316, 320:

> "After a case has been brought to this court and decided and a mandate has been issued to the court below, a second appeal brings up nothing for revision but the proceedings subsequent to the mandate; . . ."

Therefore, the *only opportunity* petitioners herein will ever have to correct the obvious errors of the Court of Appeals is in this Honorable Court and now. After further proceedings in the District Court—directed by the Court of

Appeals—and another appeal to that latter court, time will have run out and the erroneous rulings will be perpetuated as "the law of the case" and remain a misleading precedent.

## II

Neither this District Court nor this petitioner, as stated in the opposition brief, suggest that rights of the estate of a deceased seaman to recover are governed by the Carriage of Goods by Sea Act. What the District Court found, and what this petitioner continues to maintain, is that the libelants below—both the cargo interests and the estate of the deceased seaman—have failed to prove the cause of the fire and, hence, have failed to prove that the loss of life and of cargo resulted from its negligence. Failure to prove cause was fatal to libelants below. The Court of Appeals is not justified in giving them a second shot.

Respectfully submitted,

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